IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 31 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MEHSANA DIST CO.OP MILK PRODUCERS UNION

Versus

COMMISSIONER OF INCOME-TAX

Appearance:
MR JP SHAH for Petitioner.
MR AKIL QURESHI FOR MR MANISH R BHATT
for Respondent.

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 04/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The Income Tax Appellate Tribunal, Ahmedabad Bench "C" has referred the following four questions at the instance of the assessee :

(i) "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the contribution made as a statutory liability under Sec.69 of the Gujarat Rajya Sahakari Co.op. Societies u/s.28/37 of the I.T.Act ?"

(ii) "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in the interpretation and application of Sec.35-C of the I.T.Act,1961 ?"

(iii) "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that entire expenditure of Rs.65,56,555/- was not eligible for weighted deduction u/s. 35-C of the I.T.Act ?"

(iv) "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that only 10% of the expenses incurred on dissemination of information or demonstration of modern techniques and methods of Agricultural animal husbandary or dairy or poultry farming or advice on such technique or method is eligible for deduction u/s.35-C of the I.T.Act ?"

At the instance of the revenue the following question has also been referred :

"Whether, the Appellate Tribunal is right in law and on facts in allowing 10% of the expenditure for weighted deduction u/s.35-C of the I.T.Act,1961 ?"

2 We have heard Mr.J.P.Shah, learned Counsel for the applicant-assessee and Mr.Akil Qureshi, learned Counsel for the revenue.

3 In so far as question No.1 is concerned, the controversy between the parties is concluded by the decision of this Court in C.I.T. vs. Kaira District Co-operative Milk Producers' Union Ltd. 247 ITR 314 wherein it has been held by this Court that contribution made under section 69 of the Gujarat Rajya Sahakari

Cooperative Societies Act was allowable deduction. Following the said decision our answer to question No.1 is in the affirmative i.e. in favour of the assessee and against the revenue.

4 In so far as question No.2,3 & 4 and the question at the instance of the revenue are concerned, they are concluded by the decision of this Court in Income Tax Reference No. 32 of 1987, wherein it has been held that deduction under section 35C of the Act is available in relation to the entire expenditure incurred by the assessee and the Tribunal was in error in restricting the same to 10%. Accordingly, question Nos. 2, 3 and 4 referred at the instance of the assessee as well as the question referred at the instance of the revenue are answered in the negative i.e. in favour of the assessee and against the revenue.

5 The reference is disposed of accordingly with no order as to costs.

Sd/- Sd/-
(M.S.Shah,J) (D.A.Mehta,J)

m.m.bhatt